

REMARKS

Claims 1, 3-22, 37-46, 66, 81-88, 108 and 119-129 were pending. Claims 84-88, 108 and 119-126 have been withdrawn from consideration. Claims 39-42, 46 and 81-83 were canceled without prejudice, claims 1, 3, 9, 15, 22, 66, 108, 119, 123, 124 and 127 were amended, and new claims 130-132 were added. Accordingly, after entry of the present amendment, claims 1, 3-22, 37, 38, 43-45, 66, 84-88, 108 and 119-132 will be pending.

Applicants respectfully submit that claim amendments were made to remove non-elected subject matter, and to amend language specified by the Examiner, as discussed in more detail *infra*. Support for the amendments to the claims can be found throughout the specification and claims as originally filed. Support for the new claims can also be found throughout the specification and claims as originally filed and at least, for example, in paragraphs [0074] and [0068] of the published PCT application as well as original claims 22 and 23. *No new matter has been added.*

Applicants reserve the right to pursue cancelled subject matter in one or more continuation or divisional applications.

Double Patenting

Claims 1-22, 40, 43, 66 and 81 have been provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-5 and 10 of co-pending U.S. Application No. 10/657,910.

Pursuant to MPEP 804(I)(B), it is Applicants' understanding that, should the claims be considered allowable but for the provisional nonstatutory obviousness-type double patenting rejection, the Examiner will remove the rejection. However, if Applicants' understanding is incorrect, Applicants will consider filing a terminal disclaimer at that time, if appropriate.

Claim Rejections – 35 U.S.C. §112

Claims 9-21, 37-46 and 66 have been rejected under 35 U.S.C. §112, second paragraph, as allegedly being indefinite for failing to particularly point out and distinctly claim the subject

matter regarded as the application. Specifically, the Examiner has indicated that the phrases “having the structure” and “has the structure” render the products indefinite. In the interest of expediting prosecution and in no way acquiescing to the validity of the rejection, claims 9, 15, 22, 66 and 108 have been amended to recite that the compound is “*of* the structure...” as requested by the Examiner.

Claims 1, 3-22, 37-46, 66, 81-83 and 127-129 have been rejected under 35 U.S.C. §112, second paragraph, as failing to comply with the written description requirement. Specifically, the Examiner has objected to the phrase “may form...” in the definition of certain substituents (e.g., R₁, R₃, etc.). In the interest of expediting prosecution and in no way acquiescing to the validity of the rejection, the claims have been amended to remove the word “may” from the phrase “may form” as suggested by the Examiner.

In view of the foregoing, Applicants respectfully request withdrawal of these rejections under 35 U.S.C. §112 and reconsideration of the claims.

Claims 39-41 have been rejected under 35 U.S.C. §112, first paragraph, as failing to comply with the enablement requirement. Claims 42 and 46 have also been rejected under 35 U.S.C. §112, first paragraph, as failing to comply with the enablement requirement. Claims 81-83 have also been rejected under 35 U.S.C. §112, first paragraph, as failing to comply with the enablement requirement.

Applicants respectfully disagree. However, in the interest of expediting prosecution and without acquiescing to the validity of the present rejection, claims 39-42, 46 and 81-83 have been canceled. Accordingly, Applicants respectfully submit that the rejections under 35 U.S.C. §112, first paragraph, have been rendered moot.

Claim Objection – Non-elected subject matter

Claims 1, 3-22, 37-46, 66, 81-83 and 127-129 have been objected to as containing non-elected subject matter. Accordingly, the claims have been amended to remove the alleged non-elected subject matter solely in the interest of expediting prosecution. It is to be understood that

these claim amendments have not been made for reasons of patentability. In view of the above, Applicants respectfully request withdrawal of this objection.

Claim Rejoinder

Should the Examiner find the compound claims allowable, Applicants respectfully request rejoinder of method claims commensurate in scope with the allowed product (*e.g.*, claims 84-88, 108 and 119-126), in accordance with MPEP 821.04 and *In re Ochiai*, 71 F.3d 1565, 37 USPQ 1127 (Fed. Cir. 1995). Applicants invite the Examiner to contact the undersigned to discuss rejoinder, should the Examiner have any questions or comments.

CONCLUSION

Applicants invite the Examiner to contact the undersigned with questions or comments with regard to the present application.

Dated: March 10, 2009

Respectfully submitted,

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